

ESTTA Tracking number: **ESTTA459219**

Filing date: **02/29/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Strategic Marks, LLC		
Entity	LLC	Citizenship	CA
Address	25 Ridgeview Irvine, CA 92603 UNITED STATES		

Attorney information	Christopher Ditico Raj Abhyanker PC 1580 W EL CAMINO REAL STE 8 MOUNTAIN VIEW, CA 94040 UNITED STATES trademarks@rajpatent.com, cdditico@rajpatent.com, disputes@rajpatent.com Phone:650-965-8731
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Registration Subject to Cancellation

Registration No	3135751	Registration date	08/29/2006
Registrant	Lincoln Snacks Company 10 S. Wacker Drive Chicago, IL 60606 UNITED STATES		

Goods/Services Subject to Cancellation

Class 030. First Use: 2005/06/01 First Use In Commerce: 2005/06/01
All goods and services in the class are cancelled, namely: Snack mix consisting primarily of crackers, pretzels, candied nuts and/or popped popcorn

Grounds for Cancellation

Abandonment	Trademark Act section 14
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Related Proceedings	TTAB Proceeding No. 92053610
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Attachments	2012-02-29-TTAB-PTC-SZZ.pdf (16 pages)(1718777 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Christopher Ditico/
Name	Christopher Ditico
Date	02/29/2012

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. 3135751
For the mark SCREAMING ZEBRA ZONKERS registered on August 29, 2006

Strategic Marks, LLC Petitioner Vs Conagra Grocery Products Company, LLC Registrant	Cancellation No. MARK: SCREAMING ZEBRA ZONKERS Reg No. 3135751
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PETITION TO CANCEL

Strategic Marks, LLC (“Petitioner”) hereby petitions to cancel Registration No. 3135751 in International Class 30 owned by Conagra Grocery Products Company, LLC (“Registrant”). The description of goods for Registrant’s Mark is “Snack mix consisting primarily of crackers, pretzels, candied nuts and/or popped popcorn.” Petitioner believes it is damaged by the continued registration of Registration No. 3135751.

As grounds for the cancellation, Petitioner alleges as follows:

FACTS COMMON TO ALL CLAIMS

1. Petitioner is a limited liability corporation organized and existing under the laws of the State of California, with a business address at 25 Ridgeview, Irvine, CA 92603.

2. Petitioner is the owner of the pending United States trademark application for the standard character mark SCREAMING YELLOW ZONKERS! (US Serial No. 85137199) for “Popcorn Snack Food” in International Class 30. A TARR printout relating to this application is attached as Exhibit A. This application is live and pending.

3. Upon information and belief, Registrant is a corporation formed under the laws of the State of Delaware, with a business address at One Conagra Drive, Omaha, NE 68102.

4. Registrant is currently the owner of United States Trademark Registration No. 3135751, for the mark SCREAMING ZEBRA ZONKERS for “Snack mix consisting primarily of crackers, pretzels, candied nuts and/or popped popcorn” in International Class 30. This mark was registered on August 29, 2006. A TARR printout relating to this registration is attached as Exhibit B.

5. In a July 26, 2011 Notice of Suspension, the Examining Attorney for Petitioner’s application Ser. No. 85137199 maintained refusal of the application under Section 2(d) of the Trademark Act, citing subject Reg. No. 3135751 against application Ser. No. 85137199. A copy of the Examining Attorney’s July 26, 2011 Notice of Suspension is attached as Exhibit C.

6. Thus, Petitioner will be damaged by the registration of the subject registration because that registration is blocking Petitioner’s pending application Ser. No. 85137199.

COUNT I – ABANDONMENT

7. Petitioner repeats and realleges the allegations set forth in ¶¶ 1-6.

8. Upon information and belief, on or about 2007, Registrant discontinued its entire use in commerce of the SCREAMING ZEBRA ZONKERS mark after acquiring trademark rights to the marks from Lincoln Foods, registrant’s predecessor-in-interest. Since that date Registrant has

failed to use in commerce its SCREAMING ZEBRA ZONKERS mark in connection with any of the goods as identified in Reg. No. 3135751.

9. Upon information and belief, Registrant has not used in commerce the SCREAMING ZEBRA ZONKERS mark in connection with any "Snack mix consisting primarily of crackers, pretzels, candied nuts and/or popped popcorn" for at least the past three preceding years

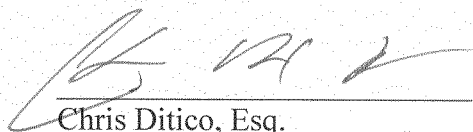
10. Upon information and belief, Registrant no longer uses its SCREAMING ZEBRA ZONKERS mark in commerce, has no intent to re-establish or resume such use, and has abandoned its SCREAMING ZEBRA ZONKERS mark pursuant to 15 U.S.C. § 1127.

WHEREFORE, Petitioner believes that it is and will be damaged by Registrant's Mark and hereby prays that Registrant's Mark be canceled and that this Petition for Cancellation be sustained in favor of Petitioner.

Petitioner has submitted its payment for this Petition to Cancel previously through electronic means.

Date: February 29, 2012

Respectfully submitted,



Chris Ditico, Esq.
Raj Abhyanker, P.C.
1580 W. El Camino Real, Suite 8
Mountain View, CA 94040
Phone: (650) 965-8731
Fax: (650) 989-2131
Attorneys for Petitioner

EXHIBIT A

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2012-02-28 20:56:48 ET

Serial Number: 85137199 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: (NOT AVAILABLE)

Mark

SCREAMING YELLOW ZONKERS!

(words only): SCREAMING YELLOW ZONKERS!

Standard Character claim: Yes

Current Status: Suspension check completed. Application remains suspended.

Date of Status: 2012-01-31

Filing Date: 2010-09-24

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 113

Attorney Assigned:
FRYE KIMBERLY

Current Location: M40 -TMO Law Office 113

Date In Location: 2012-01-31

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Strategic Marks, LLC

Address:
Strategic Marks, LLC
25 Ridgeview

Irvine, CA 92603

United States

Legal Entity Type: Limited Liability Company

State or Country Where Organized: California

GOODS AND/OR SERVICES

International Class: 030

Class Status: Active

Popcorn Snack Food

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2012-01-31 - Report Completed Suspension Check Case Still Suspended

2011-07-26 - Notification Of Letter Of Suspension E-Mailed

2011-07-26 - LETTER OF SUSPENSION E-MAILED

2011-07-26 - Suspension Letter Written

2011-07-08 - Teas/Email Correspondence Entered

2011-07-07 - Communication received from applicant

2011-07-07 - TEAS Response to Office Action Received

2011-01-11 - Notification Of Non-Final Action E-Mailed

2011-01-11 - Non-final action e-mailed

2011-01-11 - Non-Final Action Written

2011-01-04 - Assigned To Examiner

2010-11-23 - Applicant/Correspondence Changes (Non-Responsive) Entered

2010-11-23 - Assigned To LIE

2010-11-09 - TEAS Withdrawal Of Attorney Received-Firm Retains

2010-09-28 - New Application Office Supplied Data Entered In Tram

2010-09-28 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Raj Abhyanker

Correspondent

Raj Abhyanker

RAJ ABHYANKER, P.C.

1580 W EL CAMINO REAL STE 8

MOUNTAIN VIEW, CA 94040-2462

Phone Number: 650-965-8731

Fax Number: 650-989-2131

EXHIBIT B

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2012-02-28 20:46:10 ET

Serial Number: 78716402 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 3135751

Mark

SCREAMING ZEBRA ZONKERS

(words only): SCREAMING ZEBRA ZONKERS

Standard Character claim: Yes

Current Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Date of Status: 2006-08-29

Filing Date: 2005-09-20

Filed as TEAS Plus Application: Yes

Currently TEAS Plus Application: Yes

Transformed into a National Application: No

Registration Date: 2006-08-29

Register: Principal

Law Office Assigned: LAW OFFICE 109

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 650 -Publication And Issue Section

Date In Location: 2006-08-29

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Lincoln Snacks Company**Address:**

Lincoln Snacks Company
10 S. Wacker Drive
Chicago, IL 60606
United States

Legal Entity Type: Corporation**State or Country of Incorporation:** Delaware

GOODS AND/OR SERVICES**International Class:** 030**Class Status:** Active

Snack mix consisting primarily of crackers, pretzels, candied nuts and/or popped popcorn

Basis: 1(a)**First Use Date:** 2005-06-01**First Use in Commerce Date:** 2005-06-01

ADDITIONAL INFORMATION**Prior Registration Number(s):**

923936

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2010-07-21 - Assignment Of Ownership Not Updated Automatically

2008-10-02 - Attorney Revoked And/Or Appointed

2008-10-02 - TEAS Revoke/Appoint Attorney Received

2007-09-18 - Attorney Revoked And/Or Appointed

2007-09-18 - TEAS Revoke/Appoint Attorney Received

2006-08-29 - Registered - Principal Register

2006-08-11 - TEAS Change Of Correspondence Received

2006-06-06 - Published for opposition
2006-05-17 - Notice of publication
2006-04-14 - Law Office Publication Review Completed
2006-04-07 - Assigned To LIE
2006-03-27 - Approved for Pub - Principal Register (Initial exam)
2006-03-27 - Assigned To Examiner
2005-09-27 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Christopher M. Bikus

Correspondent

Christopher M. Bikus

Husch Blackwell Sanders LLP

Suite 2100

1620 Dodge Street

Omaha NE 68102

Phone Number: 402-964-5144

Fax Number: 402-964-5050

EXHIBIT C

To: Strategic Marks, LLC (trademarks@rajpatent.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85137199 - SCREAMING YELLOW ZONKERS! - 19075
Sent: 7/26/2011 6:06:19 PM
Sent As: ECOM113@USPTO.GOV
Attachments:

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

APPLICATION SERIAL NO. 85137199

MARK: SCREAMING YELLOW ZONKERS!

85137199

CORRESPONDENT ADDRESS:

Raj Abhyanker
RAJ ABHYANKER, P.C.
1580 W EL CAMINO REAL STE 8
MOUNTAIN VIEW, CA 94040-2462

GENERAL TRADEMARK INFORMATION:
<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Strategic Marks, LLC

**CORRESPONDENT'S REFERENCE/DOCKET
NO:**

19075

CORRESPONDENT E-MAIL ADDRESS:
trademarks@rajpatent.com

SUSPENSION NOTICE: NO RESPONSE NEEDED

ISSUE/MAILING DATE: 7/26/2011

The trademark examining attorney is suspending action on the application for the reason stated below.
See 37 C.F.R. §2.67; TMEP §§716 et seq.

The USPTO will periodically conduct a status check of the application to determine whether suspension remains appropriate, and the trademark examining attorney will issue as needed an inquiry letter to applicant regarding the status of the matter on which suspension is based. TMEP §§716.04, 716.05. Applicant will be notified when suspension is no longer appropriate. *See* TMEP §716.04.

No response to this notice is necessary; however, if applicant wants to respond, applicant should use the "Response to Suspension Inquiry or Letter of Suspension" form online at <http://teasroa.uspto.gov/rsi/rsi>.

Action on this application is suspended pending the disposition of:

- Cancellation No. **92053610**

The proceeding above pertains to one or more of the following: (1) a registration cited as a bar to applicant's registration under Section 2(d) of the Trademark Act, (2) a pending application(s) that could present a future bar to registration under Section 2(d) if it matured into a registration, and/or (3) the registrability of applicant's mark. 15 U.S.C. §1052. Therefore, action is suspended pending the final disposition of this proceeding(s). See 37 C.F.R. §2.83; TMEP §§716.02(a), (c) and (d), 1208 et seq.

Section 2(d) Refusals Maintained

The refusal to register the applicant's mark based on a likelihood of confusion with the marks in U.S. Registration Nos. 0923936 and 3135751 is maintained. The examining attorney has considered the applicant's arguments against the refusal but finds them unpersuasive. The applicant's mark is the same as and highly similar to the registered marks, and the goods of the parties are related. The differences between the marks and the goods is not sufficient to overcome the likelihood of confusion.

If the applicant has any questions, please contact the assigned examining attorney.

/Kimberly Frye/
Trademark Examining Attorney
Law Office 113
(571) 272-9430 (phone)
(571) 273-9430 (fax)
E-mail: kimberly.frye@uspto.gov

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <http://tarr.uspto.gov/>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/teas/eTEASpageE.htm>.

To: Strategic Marks, LLC (trademarks@rajpatent.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85137199 - SCREAMING
YELLOW ZONKERS! - 19075
Sent: 7/26/2011 6:06:21 PM
Sent As: ECOM113@USPTO.GOV
Attachments:

IMPORTANT NOTICE REGARDING YOUR U.S. TRADEMARK APPLICATION

**USPTO LETTER (AN OFFICE ACTION) HAS ISSUED ON 7/26/2011 FOR
SERIAL NO. 85137199**

Please follow the instructions below:

TO READ OFFICE LETTER: Click on this [link](http://portal.uspto.gov/external/portal/tow) or go to <http://portal.uspto.gov/external/portal/tow> and enter the application serial number to [access](#) the Office letter

PLEASE NOTE: The Office letter may not be immediately available but will be viewable within 24 hours of this e-mail notification.

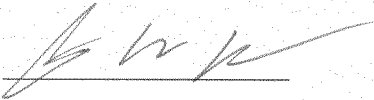
HELP: For *technical* assistance in accessing the Office correspondence, please e-mail TDR@uspto.gov. Please contact the assigned examining attorney with questions about the Office letter.

CERTIFICATE OF SERVICE

I certify that, on the 29th day of February 2012, a true copy of the foregoing **PETITION TO CANCEL** is being served by facsimile and mailing a copy thereof by certified mail to:

CHRISTOPHER M BIKUS
HUSCH BLACKWELL LLP
1620 DODGE ST STE 2100
OMAHA, NE 68102
UNITED STATES
pto-om@huschblackwell.com
Fax: 402.964.5050

By



Chris Ditico, Esq.
Raj Abhyanker, P.C.
1580 W. El Camino Real, Suite 8
Mountain View, CA 94040
Phone: (650) 965-8731
Fax: (650) 989-2131
Attorneys for Petitioner